Annual Report of the Civil Service Disclosure of Wrongdoing Regulations and Policy

2005-2006

NOVA SCOTIA
Public Service Commission

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Message from the Minister of Human Resources

It's my pleasure to present the 2005-06 Annual Report on the Civil Service *Disclosure of Wrongdoing Regulations* and *Policy* to the citizens of this province.

Each year, the Government of Nova Scotia reports on its experience with the application of the *Disclosure of Wrongdoing Regulations* and *Disclosure of Wrongdoing Policy*, introduced in 2004.

As part of our commitment to the highest ethical and moral standards as we serve Nova Scotians, elected and senior government officials want to be aware of, and act on, wrongdoing within departments, offices, and agencies. This can only be done when public servants are assured that they can disclose wrongdoing without fear of reprisal.

With this ongoing administration and reporting, our government is illustrating its commitment to the delivery of quality public services in an environment where values such as integrity, accountability, and public trust prevail.

I would like to thank the employees of the Public Service Commission and the Office of the Ombudsman for their vital work in this area.

Honourable Ernest L. Fage
Minister, Human Resources

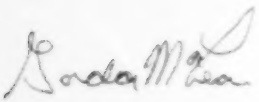
Message from the Public Service Commissioner

It is my honour to present the 2005-06 Annual Report on the Civil Service *Disclosure of Wrongdoing Regulations* and *Policy*.

Nova Scotia's public servants identified human resource values to guide our decision-making, actions, and relationships within the provincial government. As such, respect, integrity, diversity, accountability, and the public good are the values which are used to administer the *Disclosure of Wrongdoing Regulations* and *Policy*.

I believe that ensuring employees across government understand how to report a wrongdoing is just as important as the mechanisms themselves. It is our commitment to ensure information about these processes and protections are readily available.

I would like to extend my thanks to the people who have contributed to the development and administration of these important regulations and policy. By identifying and dealing with wrongdoing in an accountable way, we can maintain the ethical and professional performance of the public service.



Acting Commissioner
Gordon MacLean

Executive Summary

The Government of Nova Scotia is committed to ensuring that Nova Scotians continue to be served by a professional, ethical, accountable public service, worthy of the public's trust.

In September 2004, the Government of Nova Scotia developed regulations and policy outlining a clear process to encourage public servants to report any wrongdoing they are aware of and perceive to be in their workplace, and to protect those employees who follow the established process from reprisal action.

The second annual report on the Civil Service *Disclosure of Wrongdoing Regulations* and *Policy* addresses the requirement of government to report annually on disclosures of wrongdoing to the citizens of Nova Scotia. This annual report covers the time period of April 1, 2005 to March 31, 2006.

During fiscal year 2005-2006, Government turned its attention to raising awareness about the *Disclosure of Wrongdoing Regulations* and *Policy* beyond the core public service to the broader public sector, i.e., the government agencies. The Public Service Commission contacted all government agencies seeking information about their current mechanisms, and hosted a number of information sessions.

In the 2005-2006 fiscal year, there were no formal disclosures of wrongdoing submitted to the Deputy Ministers/CEOs of departments/offices. Many departments, did however, continue to raise awareness about disclosure among their employees.

The Office of the Ombudsman reported that it received no formal disclosures in 2005-2006 and provided appropriate information, advice and direction for six inquiries relating to the regulations and policy. The Office of the Ombudsman undertook a number of initiatives in support of the implementation of the regulations and policy including developing an information package for government employees considering making a disclosure, establishing a wrongdoing inquiry line (1-877-670-1100) and E-mail communication to all government employees.

Government is pleased with the interest shown by the government agencies and will follow up in 2006-2007 on their progress to establish mechanisms for their employees. The Public Service Commission will continue to support awareness of the regulations and policy via their disclosure of wrongdoing website. Additionally, the Public Service Commission is planning for an evaluation of the policy during 2007-2008.

The Framework: Disclosure of Wrongdoing Regulations and Policy

Government is accountable to the citizens of Nova Scotia and is committed to maintaining a professional public service that is deserving of the public's trust. One way to ensure these goals are met is through the creation of processes, under the *Disclosure of Wrongdoing Regulations* and *Policy*, to encourage disclosures and to protect employees who report wrongdoing.

The *Disclosure of Wrongdoing Regulations* and *Policy* came into effect in September 2004. The **regulations** are applicable to all civil servants. The **policy** is applicable to all direct employees of government, including Highway Workers, Adult Correction Workers, civil servants, and casual employees.

This annual report provides information on activities during the period of April 1, 2005 to March 31, 2006.

Defining Wrongdoing

These regulations define wrongdoing to include contravention of any *Act* of the Parliament of Canada or of the Nova Scotia Legislature, or of any regulations made under any such *Act*, if the contravention relates to the official activities of employees or any public funds or assets; gross mismanagement; an act or an omission that creates a substantial and specific danger to the life, health or safety of a person; or the taking of a reprisal against an employee.

Disclosure Process

There are a number of mechanisms available for employees to raise workplace concerns, such as the grievance process, alternate dispute resolution process, and performance management systems. The *Disclosure of Wrongdoing Regulations* and *Policy* provide a mechanism specifically designed to encourage employees to bring forward concerns regarding wrongdoing and to assure them of protection from reprisals.

The disclosure process prompts an investigation, requires corrective action, and protects the disclosing employee. Employees are provided with the choice of raising their concerns about wrongdoing or perceived wrongdoing with their immediate supervisor, their deputy minister, and/or the Office of the Ombudsman.

If an employee is not sure how to proceed, or is unsure if something is a wrongdoing, they may also seek confidential advice from the Conflict of Interest Commissioner.

Nothing in these regulations preclude an individual's right and/or obligation to report unlawful/illegal actions or activities to the appropriate authorities. Wrongdoing can also be reported to a police organization when it is necessary to do so to prevent imminent and serious danger to the life, health or safety of a person, and when there is not sufficient time to make the disclosure using the internal processes identified above.

Protection from Reprisals and Protection of Privacy

Under the regulations and policy it is a wrongdoing to take reprisal action against an employee who reports wrongdoing.

Throughout the disclosure process, unless required by law or considered appropriate by the deputy head under the circumstances, the identity of persons involved are protected from publication. This includes employees, witnesses, or anyone who is alleged to be responsible for a wrongdoing.

Reporting & Accountability Requirements

Within the *Disclosure of Wrongdoing Regulations* and *Policy* there are reporting requirements for individuals involved in the process. These are necessary to document the information received, monitor timelines, review recommendations, provide responses to disclosing employees, and report annually to the citizens of Nova Scotia on government's experience with disclosures of wrongdoings.

Disclosing employees need to know that their concerns will be addressed in a timely manner. A 30-day response time ensures that the process moves quickly to enable timely resolution, while communicating to reporting employees that the process is working and their disclosure is being addressed.

Deputy heads and immediate supervisors are responsible for ensuring that employees are informed of the regulations and policy. They are also responsible for responding to any disclosures of wrongdoing that are reported to them.

When the Ombudsman receives a disclosure and determines an investigation is warranted, the disclosing employee, the Public Service Commissioner, and the deputy head are notified. If the Ombudsman determines an investigation is not warranted, he/she notifies the disclosing employee and the Public Service Commissioner and may notify the deputy head.

The Ombudsman must also, within three months after the end of each fiscal year, submit an annual report to the Public Service Commissioner.

The Public Service Commissioner is responsible for submitting an annual report to the Minister of Human Resources. This report will summarize disclosures

reaching the Deputy Ministers and/or Ombudsman level throughout government.

The Public Service Commission is responsible for monitoring the effectiveness of the process, and may periodically conduct compliance audits of departmental practices.

Activities in 2005-2006

During 2005-2006, the Public Service Commission, with lead responsibility for implementation, continued to raise awareness about the regulations and policy and provide support to departments/offices (Appendix 1). These efforts included the development of the disclosure of wrongdoing website (www.gov.ns.ca/psc/) for easy access to several resources, such as contact information, frequently asked questions, and a guide for conducting an assessment/investigation of a disclosure of wrongdoing.

In the interest of widespread application of similar processes and protections across the public sector, the Public Service Commission consulted government agencies (Appendix 2), as was promised when government approved the regulations and policy in 2004. These consultations were initiated in the summer of 2005 and are described in more detail below.

This annual report also draws information from two other principle sources: deputy heads of government departments and offices, and the Office of the Ombudsman, as per their regulatory requirement to inform the Public Service Commissioner of disclosure activity within their areas of responsibility.

Consultation with the Government Agencies

A significant undertaking in 2005-2006 was consulting with the Government agencies. Government made the commitment to seek widespread application across the public sector when it approved the *Disclosure of Wrongdoing Regulations* and *Policy*. Thus, the Public Service Commission initiated a consultation, following the implementation of the regulations and policy within core government.

The Public Service Commission used these consultations to learn about disclosure programs that agencies have in place, to share information about government's regulations and policy, and to obtain feedback from the agencies concerning those processes and protections.

To this end, in the summer of 2005, the Public Service Commissioner contacted his counterparts at each of the government agencies, asking them to complete a survey. At that time, the Commissioner also indicated information sessions would be held later in the Fall once the inventory of current approaches had been complied.

Of the 55 government agencies contacted, 48 responded to the survey (87% response rate). One-third of respondents (16 agencies) either had a mechanism in place or under development. Another five agencies indicated in their comments their intent to adopt government's mechanism or something similar.

The second stage of the consultation was to host a number of information sessions. Where possible, the Public Service Commission used existing sector-specific forums. For example, the CEOs of the district health authorities meet monthly with officials of the Department of Health. The Commission made arrangements with the Department of Health for disclosure of wrongdoing to be an agenda item at their November 2005 meeting. The same approach was followed for school boards, housing authorities and government agencies reporting to the Minister of Economic Development. The remaining government agencies were invited to an information session held in February 2006.

The Public Service Commission encouraged government agencies that had not already done so, to implement disclosure of wrongdoing processes and appropriate employee protections, and offered to support their development efforts. The Commission also indicated it would follow-up with the government agencies for an update. These results will be reported in the 2006-2007 annual report.

Department Reports

In the Spring of 2006, the Public Service Commissioner contacted all government departments and offices to which the *Disclosure of Wrongdoing Regulations* and *Policy* apply, asking them to respond to two questions on behalf of their department/office:

- Did your department/office deal with any formal disclosures during the 2005-2006 fiscal year? (with the request to forward copies of relevant correspondence if the answer is Yes).

- What specific actions, if any, were taken within your department/office to raise employee awareness of understanding of the *Disclosure of Wrongdoing Regulations* and *Policy* during this past year? (What communication, training, etc).

In 2005-2006 fiscal year, there were no formal disclosures of wrongdoing to the deputy heads of departments or offices.

Two-thirds of departments and offices reported specific awareness activities during 2005-2006. One office indicated planned activities for 2006-2007.

Many departments provided information about these regulations and policy through orientation programs or employee handbooks, staff meetings at both the senior management and divisional levels, as well as department-wide E-mail communication.

A number of departments also identified the initial presentations by the Public Service Commission, the Office of the Ombudsman's awareness campaign in October 2005, and the Public Service Commissioner's E-mail communication

when the disclosure of wrongdoing website was launched in the summer of 2005.

Office of the Ombudsman Report

The Office of the Ombudsman submitted its 2005-2006 report to the Public Service Commissioner, as summarized below:

- There were no formal disclosures of wrongdoing received by the Office of the Ombudsman in 2005-2006.

- The Office of the Ombudsman received six inquiries relating to the *Disclosure of Wrongdoing Regulations* and *Policy*. Three of these inquiries were from civil servants; two inquiries were from government employees who were not civil servants; and one inquiry was from a citizen. In all these inquiries, appropriate information, advice and/or direction were provided.

The Office of the Ombudsman undertook a number of initiatives during 2005-2006 in support of the implementation of the *Disclosure of Wrongdoing Regulations* and *Policy* including:

- development of an information package for government employees who are considering making a disclosure
- establishment of a wrongdoing inquiry line (1-877-670-1100) which provides a confidential avenue for government employees to obtain information
- E-mail communication in October 2005 to all government employees promoting awareness of the Ombudsman's role in the disclosure of wrongdoing process
- liaison with the Public Service Commission to identify training requirements for managers/supervisors who may be responsible for conducting disclosure of wrongdoing investigations
- liaison with the Public Service Commission to identify resources and support required to ensure consistent understanding of the disclosure of wrongdoing process by government employees
- establishment of internal administrative processes within the Office of the Ombudsman to ensure the security of information and files as well as the management/investigation of allegations of wrongdoing

Additionally, the Office of the Ombudsman identified one issue regarding the reporting requirements for the government departments and offices to which the regulations apply. Currently deputy heads are only required to report on the number of formal disclosures of wrongdoing received by their departments. The Office of the Ombudsman recommended that the Public Service Commission develop and communicate a policy which requires applicable departments and offices to report yearly on steps taken and/or initiatives launched to ensure a

consistent understanding of the disclosure of wrongdoing process by government employees and to ensure arrangements and processes for disclosure within their departments/offices are adequate and appropriate.

Recognizing the merit of this recommendation, the Public Service Commissioner asked departments and offices to identify specific actions taken within their departments/offices during 2005-2006 to raise employee awareness of understanding of the *Disclosure of Wrongdoing Regulations* and *Policy*. These results have been reported in the previous section Departmental Reports and will be part of the Commissioner's annual request to departments and offices with respect to disclosure of wrongdoing activities.

Response to Office of the Ombudsman's 2004-2005 Recommendation

In the Office of Ombudsman's 2004-2005 annual report, the Ombudsman recommended that the Public Service Commission provide clarification with regards to the scope of Section 20(c) of the *Disclosure of Wrongdoing Regulations*.

The subject matter of this section deals with the potential for disciplinary action against an employee who makes a disclosure of wrongdoing other than in the course of a procedure established under the *Disclosure of Wrongdoing Regulations* or any *Act* of the Legislature or when otherwise lawfully required to do so.

The Office of the Ombudsman received expressed concerns about this section in relation to section 6(2)(a) of the regulations which allows for an employee to make a disclosure of wrongdoing other than as provided for in the regulations if the employee believes on reasonable grounds that the disclosure is necessary to prevent imminent and serious danger to the life, health or safety of a person. One point being raised is that there may be situations that fall outside of 6(2)(a) yet are considered reasonable grounds.

Prior to being flagged as a concern by the Office of The Ombudsman, the Public Service Commission had received questions about the relationship of these sections to each other during the early days of implementing the *Disclosure of Wrongdoing Regulations* and *Policy*. At that time, the Commission sought clarification from its legal counsel.

The legal advice given to the Public Service Commission is paraphrased as follows: Section 6 does not prevent an employee from reporting an illegal act to the police, regardless of the circumstances. In this respect, Section 6 does not purport to be a complete "code" in this respect. If it did, the word "may" would have been replaced with the words "may only." Clause 20(c) which states that 'failure to follow procedures set out in this policy may result in appropriate disciplinary action' needs to be understood with this emphasis, i.e., "may" and

"appropriate." The application of this clause would be guided by public policy and legal considerations.

To ensure employees had access to plain-language information about wrongdoing processes and protections, the Public Service Commission developed a disclosure of wrongdoing website. The resource material available on the website, specifically the FAQ section, helps to address the concerns raised about application of the regulations.

As part of the ongoing communication effort concerning the regulations and policy, the Public Service Commission E-mailed all government employees in the summer of 2005 when the website was launched.

Looking Ahead

Now, 18 months in existence, the active implementation phase of the *Disclosure of Wrongdoing Regulations* and *Policy* has been completed.

With its mandate to provide support and interpretation for all its corporate human resources policies and regulations, the Public Service Commission will continue to fulfill this role for the *Disclosure of Wrongdoing Regulations* and *Policy*. In 2006-2007, the consultation phase with the government agencies will be completed. Additionally, the Public Service Commission will ensure an appropriate evaluation of the policy in 2007-2008. The Public Service Commissioner will continue to monitor usage of the disclosure process and report annually to the Minister of Human Resources on the fiscal year's activities.

Appendix 1 - Departments/Offices

Departments

Agriculture and Fisheries
Community Services
Education
Energy
Environment and Labour
Finance
Health
Health Promotion and Protection
Intergovernmental Affairs
Justice
Natural Resources
Public Service Commission
Service Nova Scotia and Municipal Relations
Tourism, Culture and Heritage
Transportation and Public Works

Offices

Aboriginal Affairs
African Nova Scotia Affairs
Communications Nova Scotia
Emergency Measures Office
Human Rights Commission
NS Advisory Council on the Status of Women
NS Utilities and Review Board
Office of Acadian Affairs
Office of Auditor General
Office of Economic Development
Office of Immigration
Office of Ombudsman
Office of the Premier
Public Prosecution Service
Senior Citizen's Secretariat
Speaker's Office
Treasury and Policy Board
Voluntary Planning

Appendix 2 - Government Agencies

AgraPoint International inc
AgriTECH Park Inc
Annapolis Valley District Health Authority
Annapolis Valley Housing Authority
Annapolis Valley Regional School Board
Art Gallery of Nova Scotia
Cape Breton District Health Authority
Cape Breton Victoria Regional School Board
Cape Breton Island Housing Authority
Capital District Health Authority
Chignecto-Central Regional School Board
Cobequid Housing Authority
Colchester District Health Authority
Conseil Scolaire Acadien Provincial
Cumberland District Health Authority
Eastern Mainland Housing Authority
Guysborough Antigonish-Strait Health Authority
Halifax/Dartmouth Bridge Commission
Halifax Regional School Board
Highway 104 Western Alignment Corporation
InNovacorp
Izaak Walton Killam Health Centre
Law Reform Commission
Metropolitan Housing Authority
NS Business Inc
NS Community College
NS Community College Foundation
NS Crop & Livestock Insurance Commission
NS Farm Loan Board
NS Film Development Corporation
NS Fisheries and Aquaculture Loan Board
NS Gaming Corporation
NS Gaming Foundation
NS Health Research Foundation
NS Legal Aid Commission
NS Liquor Corporation
NS Municipal Finance Corporation
NS School Boards Association
NS School Insurance Program Association
NS Utility and Review Board
Pictou County District Health Authority
Resource Recovery Fund Board Incorporated
Sherbrooke Restoration Commission
South Shore District Health Authority
South Shore Housing Authority
South Shore School Board
South West Nova District Health Authority
Strait Regional School Board
Sydney Environmental Resources Ltd

Sydney Steel Corporation
Sydney Tar Ponds Agency
Trade Centre Limited
Tri-county Housing Authority
Tri-county School Board
Waterfront Development Corporation Ltd

Appendix 3 - Civil Service Disclosure of Wrongdoing Regulations

This publication is unofficial and is for reference only. For the official version of the regulations, consult the original documents on file with the Registry of Regulations, or as published in the Royal Gazette Part II.

Regulations are amended frequently. Please make sure that you have the most up-to-date version. To do this, either contact the Registry or check the list of Regulations by Act on our website at <www.gov.ns.ca/just/regulations/regs/>.

Civil Service Disclosure of Wrongdoing Regulations made under Section 45 of the *Civil Service Act* R.S.N.S. 1989, c. 70 O.I.C. 2004-374 (September 16, 2004), N.S. Reg. 205/2004

Definitions

1 In these regulations,

(a) "civil service" means the positions in the public service of the Province to which appointments may be made by the Public Service Commission and such other positions as may be designated as positions in the Civil Service by the Governor in Council;

(b) "Commissioner" means the Public Service Commissioner;

(c) "deputy head" means the deputy of the member of the Executive Council presiding over a department and all others whom the Governor in Council from time to time designates as having the status of deputy head;

(e) "employee" means a person appointed to the civil service;

(f) "Ombudsman" means the Ombudsman appointed under the *Ombudsman Act*.

Wrongdoing

2 (1) For the purposes of these regulations, a wrongdoing occurs if there is

(a) a contravention of any Act of the Parliament of Canada or of the Legislature, or of any regulations made under any such Act, if the contravention relates to the official activities of employees or any public funds or assets;

(b) gross mismanagement;

(c) an act or an omission that creates a substantial and specific danger to the life, health or safety of a person; or

(d) the taking of a reprisal against an employee.

(2) For the purposes of clause (1)(b), gross mismanagement means a deliberate act or an omission showing a reckless or wilful disregard for the efficient management of significant government resources.

Protection of employee from reprisal

3 (1) A reprisal occurs if any of the following measures are taken against

an employee by reason solely that the employee has, in good faith, made a disclosure of a wrongdoing under these regulations or expressed an intention to make a disclosure of a wrongdoing under these regulations or has, in good faith, co-operated in an investigation carried out under these regulations:

(a) a disciplinary measure;

(b) demotion of the employee;

(c) termination of the employment of the employee;

(d) any measure that adversely affects the employment or working conditions of the employee; or

(e) a threat to take any of the measures referred to in clauses (a) to (d).

(2) No person shall take a reprisal against an employee.

Request for advice

4 (1) An employee who is considering making a disclosure of a wrongdoing may make a written request for advice to the Conflict of Interest Commissioner designated under Section 26 of the *Members and Public Employees Disclosure Act*.

(2) The Conflict of Interest Commissioner must not publically disclose any information provided under subsection (1) and must protect the identity of persons named under subsection (1), unless otherwise required by law.

Contents of disclosure of wrongdoing

5 (1) A disclosure of a wrongdoing under subsection 6(1) must be in writing and must include the following information, if known:

(a) the nature of the wrongdoing;

(b) the name of the person or persons alleged to have committed or about to commit the wrongdoing;

(c) the date and description of the wrongdoing; and

(d) whether the disclosure has already been made and a response received under these regulations,

and any additional relevant information.

(2) A disclosure of a wrongdoing under subsection 6(1) must be made within 12 months of the employee becoming aware of the

wrongdoing.

Procedure for disclosure of wrongdoing

6 (1) An employee who reasonably believes that they are being asked to commit a wrongdoing, or who reasonably believes that a wrongdoing has been committed or is about to be committed, may disclose the matter to

(a) their immediate supervisor;

(b) their deputy head, in accordance with Section 8; or

(c) the Ombudsman, in accordance with Section 10.

(2) Despite subsection (1), an employee may make a disclosure of a wrongdoing other than as provided for in subsection (1) if they believe on reasonable grounds that

(a) it is necessary to do so to prevent imminent and serious danger to the life, health or safety of a person; and

(b) there is not sufficient time to make the disclosure under these regulations.

(3) A disclosure under subsection (2) must be made to the police department or police agency that the employee reasonably believes can address the imminent and serious danger identified.

Response of immediate supervisor to disclosure of wrongdoing

7 (1) A supervisor who receives a disclosure of a wrongdoing under clause 6(1)(a) must investigate the matter to the extent appropriate and must respond in writing to the disclosing employee within 30 days of receiving the disclosure.

(2) A supervisor who receives a disclosure of a wrongdoing under clause 6(1)(a) must report in writing to their deputy head, within 30 days of receiving the disclosure, advising of

(a) the disclosure;

(b) the results of the investigation to date; and

(c) the written response to the disclosing employee.

(3) Unless required by law, a supervisor who receives a disclosure of wrongdoing under clause 6(1)(a) must

(a) not publically disclose any information that comes to their knowledge in the performance of their duties under these regulations; and

(b) to the extent possible, protect the identity of persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, from publication.

Disclosure of wrongdoing to deputy head

8 To make a disclosure of a wrongdoing under clause 6(1)(b), an employee must

(a) have received a response from their immediate supervisor under subsection 7(1) and must reasonably believe that the matter will not be appropriately addressed; or

(b) reasonably believe that it would not be appropriate to disclose the matter to the employee's immediate supervisor because of the subject-matter of the wrongdoing or the person alleged to have committed it.

Response of deputy head to disclosure of wrongdoing

9 (1) A deputy head who receives a disclosure of a wrongdoing under clause 6(1)(b) must investigate the matter to the extent appropriate and must respond in writing to the disclosing employee within 30 days of receiving the disclosure.

(2) A deputy head who receives a disclosure of a wrongdoing under clause 6(1)(b) must report in writing to the Commissioner, within 30 days of receiving the disclosure, advising of

(a) the disclosure;

(b) the results of the investigation to date; and

(c) the written response to the disclosing employee.

(3) Unless required by law or considered appropriate by the deputy head under the circumstances, a deputy head who receives a disclosure of wrongdoing under clause 6(1)(b) or a report under subsection 7(2) must

(a) not publically disclose any information that comes to their knowledge in the performance of their duties under these regulations; and

(b) to the extent possible, protect the identity of persons involved in the disclosure process, including employees, witnesses and

persons who are alleged to be responsible for wrongdoings, from publication.

(4) A deputy head who receives a disclosure of a wrongdoing under ~~subsection~~ [clause] 6(1)(b) or a report under subsection 7(2) may, within 30 days of receiving the disclosure or report, refer the matter to the Ombudsman and the referral must be treated in the same manner as a disclosure of a wrongdoing under clause 6(1)(c) made for the reason set out in clause 10(a).

Disclosure of wrongdoing to Ombudsman

10 To make a disclosure of a wrongdoing to the Ombudsman under clause 6(1)(c), an employee must

(a) have received a response in accordance with subsection 9(1) and must reasonably believe that the matter will not be appropriately addressed; or

(b) reasonably believe that it would not be appropriate to disclose the matter to the employee's immediate supervisor or deputy head because of the subject-matter of the wrongdoing or the person alleged to have committed it.

Investigation by Ombudsman

11 The Ombudsman must investigate a disclosure of a wrongdoing under clause 6(1)(c) unless the Ombudsman is of the opinion that

(a) the disclosing employee ought to have exhausted other procedures available to them;

(b) the subject-matter of the disclosure is one that could more appropriately be dealt with, initially or completely, according to an alternate procedure provided for under an Act of the Legislature, regulation or policy;

(c) the subject-matter of the disclosure is trivial, frivolous or vexatious;

(d) the disclosure was not made in good faith with the reasonable belief in the truth of the allegations;

(e) the disclosure does not provide adequate particulars of a wrongdoing as required by subsection 5(1);

(f) the matter was not submitted within the time limit specified in subsection 5(2);

(g) the matter should be referred to another authority having jurisdiction to investigate; or

(h) having regard to all the circumstances of the case, further investigation is not warranted.

Notification of investigation

12 (1) If the Ombudsman concludes under Section 11 that it is appropriate to investigate a disclosure of wrongdoing under clause 6(1)(c), the Ombudsman must give written notice to the disclosing employee, the deputy head of the department to be investigated and the Commissioner.

(2) If the Ombudsman concludes under Section 11 that it is not appropriate to investigate a disclosure of wrongdoing under clause 6(1)(c) made for the reason set out in clause 10(a), the Ombudsman must give written notice to the disclosing employee, their deputy head and the Commissioner of the Ombudsman's conclusion and of the reasons for it.

(3) If the Ombudsman concludes under Section 11 that it is not appropriate to investigate a disclosure of wrongdoing under clause 6(1)(c) made for the reason set out in clause 10(b), the Ombudsman must give written notice to the disclosing employee and the Commissioner of the Ombudsman's conclusion and of the reasons for it.

Ombudsman's report of investigation

13 (1) The Ombudsman must report any investigation findings in writing, including,

(a) the information received in the disclosure;

(b) the steps taken in the investigation;

(c) a summary of the evidence obtained; and

(d) whether a wrongdoing has been established,

and any additional relevant information, to the disclosing employee, any deputy head involved in the disclosure or the investigation, and the Commissioner.

(2) If a finding of wrongdoing is made by the Ombudsman, the Ombudsman

(a) must recommend measures in writing to correct the wrongdoing to the appropriate deputy head, and send copies to the disclosing employee and the Commissioner; and

(b) may request notification, within a specified time, of any steps

taken to give effect to the recommendations made under clause (a).

Deputy head to respond to Ombudsman's recommendations

14 In addition to any requested notification under clause 13(2)(b), a deputy head who receives recommendations under clause 13(2)(a) must respond in writing within 30 days to the Ombudsman and must provide a copy of the response to the Commissioner.

Ombudsman may report to member of Executive Council

15 If the Ombudsman considers it necessary, the Ombudsman may report a matter to an appropriate member of the Executive Council, including, but not limited to, when

(a) action has not been taken within a reasonable time in respect of one of the Ombudsman's recommendations to a deputy head under clause 13(2)(a); or

(b) a situation exists that constitutes an imminent risk of a substantial and specific danger to the health and safety of the public.

Ombudsman's annual report

16 The Ombudsman must, within 3 months after the end of each fiscal year, submit an annual report to the Commissioner setting out, for that fiscal year

(a) the number of general inquiries relating to these regulations;

(b) the number of disclosures received;

(c) the number of investigations commenced;

(d) the number of recommendations made pursuant to clause 13(2)(a);

(e) whether there are any systemic problems that give rise to wrongdoings; and

(f) any recommendations for improvement that the Ombudsman considers appropriate,

and any additional matter that the Ombudsman considers necessary.

Commissioner's annual report

17 (1) The Commissioner must report annually to the Minister responsible for the Public Service Commission respecting the disclosures of wrongdoing made during the fiscal year.

(2) The Minister will table the report received under subsection (1) in the House of Assembly.

Cooperation with Ombudsman

18 (1) A deputy head must provide the Ombudsman with any facilities, assistance, information and access to the offices under their control and direction that the Ombudsman requires for the performance of the Ombudsman's duties under these regulations.

(2) Subject to Section 19, every employee must co-operate with the Ombudsman and provide the Ombudsman with any information that the Ombudsman may require in the performance of the Ombudsman's duties under these regulations.

Information employee not authorized to disclose

19 Nothing in these regulations authorizes an employee to disclose

(a) information that would reveal the substance of deliberations of the Executive Council or any of its committees; or

(b) information that is protected by solicitor-client privilege.

Disciplinary action against employee

20 In addition to, and apart from, any other sanction provided for by law, an employee may be subject to appropriate disciplinary action, including termination of employment, if the employee

(a) commits a wrongdoing;

(b) makes a disclosure of a wrongdoing and the disclosure is frivolous, vexatious or in bad faith; or

(c) makes a disclosure of a wrongdoing other than in the course of a procedure established under these regulations or any Act of the Legislature or when otherwise lawfully required to do so.

False or misleading statement

21 No person shall, in a disclosure of a wrongdoing or in the course of any investigation of a wrongdoing, knowingly make a false or misleading statement, either orally or in writing, to a supervisor, deputy head, the Ombudsman or a person acting on behalf of or under the direction of any of them.

Obstruction in performance of duties

22 No person shall wilfully obstruct a supervisor, a deputy head, the Ombudsman or any person acting on behalf of or under the direction of any of them, in the performance of their duties under these regulations.

Destruction, falsification or concealment of documents or things

23 No person, knowing that a document or thing is likely to be relevant to an investigation under these regulations, shall

(a) destroy, mutilate or alter the document or thing;

(b) falsify the document or make a false document;

(c) conceal the document or thing; or

(d) direct, counsel or cause, in any manner, any person to do anything mentioned in clauses (a) to (c), or propose, in any manner, to any person that they do anything mentioned in those clauses.

Confidentiality obligation of Ombudsman

24 Unless required by law or permitted by these regulations, the Ombudsman must

(a) not publically disclose any information that comes to the Ombudsman's knowledge in the performance of the duties under these regulations; and

(b) to the extent possible, protect the identity of persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, from publication.

Grievances and appeals not prohibited

25 Nothing in these regulations prohibits a person from filing a grievance under an applicable civil service collective agreement or an appeal under Section 94 of the *Civil Service General Regulations*.

Appendix 4 - Disclosure of Wrongdoing Policy

Province of Nova Scotia Disclosure of Wrongdoing Policy

Policy Statement

The Government of Nova Scotia is committed to providing employees with a reporting process for the disclosure of government wrongdoing and with protection against reprisal action which might have resulted from the disclosure.

This policy balances the employee's protection against reprisal for disclosing government wrongdoing, with the rights of the alleged wrongdoer. The clearly defined process for disclosure will allow for confidentiality, investigation, and recommendations.

This policy and the Regulations Respecting Civil Service Disclosure of Wrongdoing are in addition to provisions that already exist under acts such as the *Occupational Health and Safety Act*, *Ombudsman Act*, *Environment Act*, *Human Rights Act* and *Civil Service Act*, and also under collective agreements and at common law.

This policy has been developed pursuant to the Regulations Respecting Civil Service Disclosure of Wrongdoing.

Definitions

Commissioner

The Public Service Commissioner.

Conflict of Interest Commissioner

A person designated under Section 26 of the *Members and Public Employees Disclosure Act*.

Deputy Head

The deputy minister or designate of a department, or the senior administrative officer of an agency not reporting to a deputy minister.

Employee

- an employee as defined in the *Civil Service Act*
- an employee as defined in the *Corrections Act*
- an employee as defined in the *Highway Workers Collective Bargaining Act*; *or*
- any other person directly employed by the Province of Nova Scotia

EMPLOYER

Her Majesty in the right of the Province of Nova Scotia, as represented by Nova Scotia government departments, offices, and public service entities as specified in Category I of Appendix 1-A (Management Manual 100, Chapter 1, Policy 1.2 Management Manuals Policy).

GROSS MISMANAGEMENT

A deliberate act or an omission showing a reckless or wilful disregard for the efficient management of significant government resources.

OMBUDSMAN

The Ombudsman appointed pursuant to the *Ombudsman Act*.

REPRISAL

Reprisal action taken against an employee who has made a disclosure, in good faith, of wrongdoing under the Regulations Respecting Civil Service Disclosure of Wrongdoing includes

- a disciplinary measure
- demotion of the employee
- termination of the employment of the employee
- any measure that adversely affects the employment or working conditions of the employee, or
- a threat to take any of the previously identified measures.

WRONGDOING

A wrongdoing occurs if there is

- a violation of any Parliament of Canada or *Nova Scotia Legislature Act* or of any regulations made under any act, if the violation relates to the official activities of employees or any public funds or assets
- gross mismanagement
- an act or an omission that creates a substantial and specific danger to the life, health or safety of a person; or
- the taking of a reprisal against an employee.

POLICY OBJECTIVES

- To provide a process for the disclosure of wrongdoing and protection to employees who want to report government wrongdoing without fear of reprisal action being taken against them.
- To offer advice and direction for employees who want to disclose government wrongdoing.
- To protect the identity (whenever possible) of those involved in the process (e.g., alleged wrongdoer, employee disclosing and witnesses).

- To promote accountability for government by tabling an annual report in the House of Assembly.

- To clearly define wrongdoing in government and reprisal action not acceptable against the employee disclosing wrongdoing in good faith.

Application

This policy applies to all employees as defined above.

Policy Directives

An employee may request advice on the disclosure of a wrongdoing from the Conflict of Interest Commissioner by submitting a written request for advice (Appendix 20-A).

Disclosure Process

Employees are expected to follow a systematic approach for the disclosure of a wrongdoing by the disclosure process identified below. **All disclosures must be made in written form** (Appendix 20-B), unless there is imminent and serious danger.

1. An employee who reasonably believes that they are being asked to commit a wrongdoing, or who reasonably believes that a wrongdoing has been committed or is about to be committed, may disclose the matter to their immediate supervisor/manager.
2. If an employee reasonably believes the matter is not being appropriately addressed by their immediate supervisor/manager, or if the employee reasonably believes it is not appropriate to disclose the matter to their immediate supervisor they may disclose the matter to their deputy head.
3. If an employee reasonably believes the matter is not being appropriately addressed by their deputy head or if the employee reasonably believes it is not appropriate to disclose the matter to their deputy head, they may disclose the matter to the Ombudsman.
4. An employee may make a disclosure of wrongdoing to the police department or police agency that the employee reasonably believes can address imminent and serious danger, only if they believe on reasonable grounds that
   - it is necessary to do so to prevent imminent and serious danger to the life, health or safety of a person; and
   - there is not sufficient time to make the disclosure using the processes identified above in this policy.

5. A supervisor/deputy head who receives the disclosure must respond in writing to the disclosing employee within **30 days**, in addition
   - a supervisor must report in writing to their deputy head, within 30 days of receiving the disclosure from the disclosing employee; **or**
   - a deputy head must report in writing to the Commissioner, within 30 days of receiving the disclosure from the disclosing employee.
6. A deputy head who receives a disclosure of wrongdoing or a report notifying them of an alleged wrongdoing, may within **30 days** of receiving the information, refer the matter to the Ombudsman.
7. The Ombudsman, after receiving the disclosure either from the disclosing employee or the deputy head will determine if an investigation is warranted (Appendix 20-C).
   - If it is not appropriate to investigate the Ombudsman will give written notice to the disclosing employee, Commissioner, and deputy head in such cases where the deputy head has been made aware of the disclosure.
   - If it is appropriate to investigate the Ombudsman will give written notice to the disclosing employee, the deputy head of the department to be investigated, and the Commissioner.
8. After an investigation, the Ombudsman must report the findings in writing (Appendix 20-C), to the disclosing employee, any deputy head involved in the disclosure or the investigation, and the Commissioner.
9. If a finding of wrongdoing is made by the Ombudsman, the Ombudsman
   - must recommend measures in writing to correct the wrongdoing to the appropriate deputy head, and send copies to the disclosing employee and the Commissioner; and
   - may request notification, within a specified time, of any steps taken to give effect to the recommendations.
10. The deputy head must respond in writing within **30 days** to the Ombudsman with respect to any recommendations in the investigation report. A copy of the deputy head's response must be provided to the Commissioner.
11. The Ombudsman may report a matter to an appropriate member of the Executive Council, in situations as specified in Section 15 of the Regulations Respecting Civil Service Disclosure of Wrongdoing.
12. The Ombudsman must, within **3 months** after the end of each fiscal year, submit an annual report to the Commissioner setting out, for that fiscal year, the information specified in Appendix 20-C.
13. The Commissioner must report annually to the Minister responsible for the Public Service Commission, respecting disclosures of wrongdoing made during the fiscal year.
14. The Minister will table the report received from the Commissioner in the House of Assembly.

POWERS AND LIMITATIONS

- A disclosure of wrongdoing must be made within 12 months of the employee becoming aware

of the wrongdoing.

- A deputy head must provide the Ombudsman with any facilities, assistance, information and access to the offices under their control and direction that the Ombudsman requires for the performance of their duties under this policy.
- No person shall wilfully obstruct a supervisor, a deputy head, the Ombudsman or any person acting on behalf of or under the direction of any of them, in the performance of their duties under this policy.
- Every employee must co-operate with the Ombudsman and provide them with any information that they may require in the performance of the Ombudsman's duties under this policy.

PROTECTION AND CONFIDENTIALITY

- To the extent possible, the identity of the persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, shall be protected from publication.
- No person should publically disclose any information that comes to their knowledge in the performance of their duties under this policy.
- An employee shall not disclose information that would reveal the substance of deliberations of the Executive Council or any of its committees; or information that is protected by solicitor-client privilege.

FALSE OR MISLEADING DISCLOSURES

- No person shall, in a disclosure of a wrongdoing or in the course of any investigation of a wrongdoing, knowingly make a false or misleading statement, either orally or in writing, to a supervisor, deputy head, the Ombudsman or a person acting on behalf of or under the direction of any of them.
- No person, knowing that a document or thing is likely to be relevant to an investigation under this policy, shall
  - destroy, mutilate or alter the document or thing
  - falsify the document or make a false document
  - conceal the document or thing; or
  - direct, counsel or cause, in any manner, any person to do anything mentioned above, or propose, in any manner, to any person that they do anything mentioned in the above clauses.
- An employee may be subject to appropriate disciplinary action, including termination of employment, if the employee
  - commits a wrongdoing
  - makes a disclosure of a wrongdoing which is determined to be frivolous, vexatious, or in bad faith; or
  - makes a disclosure of a wrongdoing other than in the course of a procedure established under this policy or any act of the Legislature or when otherwise lawfully required to do so.

Accountability

Employees

Employees are responsible for acting in accordance with this policy.

Supervisors/Managers

Supervisors/managers are responsible for ensuring that employees are informed of the policy and process. They are also responsible for responding to any disclosures of wrongdoing that are reported to them in accordance with the process established in this policy.

Deputy Heads

Deputy Heads are responsible for ensuring that employee disclosures are reviewed and addressed as provided for in this policy. They are also responsible for responding to any disclosures of wrongdoing that are reported to them in accordance with the process established in this policy.

Deputy Heads shall ensure all employees are provided education, training, and support during the implementation of this policy.

Commissioner

The Public Service Commissioner is responsible for an annual report to the Minister of Human Resources.

Ombudsman

The Ombudsman is responsible for responding to any disclosure of wrongdoing in accordance with the process as established in this policy, and reporting annually to the Public Service Commissioner.

Monitoring

The Public Service Commission is responsible for monitoring the effectiveness of the process within the policy, and may periodically conduct audits of departmental practices to ascertain compliance by departments with this policy.

Departments are responsible for complying with all the terms of this policy.

References

Civil Service Act

General Civil Service Regulations
Regulations Respecting Civil Service Disclosure of Wrongdoing
Highway Workers Collective Bargaining Act
Corrections Act
Ombudsman Act
Members and Public Employees Disclosure Act

ENQUIRIES

General Enquiries, Public Service Commission (902) 424-7660

APPENDICES

Appendix 20-A Request for Advice

Appendix 20-B Disclosure of Wrongdoing Form

Appendix 20-C Investigation Criteria for Ombudsman to Investigate a Disclosure of Wrongdoing and Reporting Requirements of the Ombudsman

Appendix 20-A

Request for Advice

I, _____ of the Department

_____

in_____ request advice on the following matter:

Nature of the wrongdoing:

Date of wrongdoing:

Name of person alleged to have committed or to commit the wrongdoing:

Department and Position of wrongdoer:

Advice requested:

Further comments:

Signature Date

Email:
Phone:

Contact Information: Conflict of Interest Commissioner
Granville Level, Joseph Howe Building
1690 Hollis Street
Halifax, NS
Phone: (902) 424-5345

Fax: (902) 424-0632

Appendix 20-B

Disclosure of Wrongdoing Form

I, _____ of the Department _____

In _____ would like to disclose a wrongdoing.

Nature of the wrongdoing:

Date of wrongdoing:

Name of person alleged to have committed or to commit the wrongdoing:

Department and Position of wrongdoer:

Has this disclosure been made before? _____
If yes, to whom and when (name, position, department, date):

Further comments:

Signature Date

Contact Information:

Email: _____ Phone: _____

Appendix 20-C

Investigation Criteria for Ombudsman to Investigate a Disclosure of Wrongdoing and Reporting Requirements of the Ombudsman

Investigation Criteria

The Ombudsman must investigate a disclosure of a wrongdoing if

- all other procedures available to the disclosing employee have been exhausted before submitting the disclosure of wrongdoing to the Ombudsman's Office
- the subject matter of the disclosure would not be dealt with more appropriately by an alternate procedure under an act of the Legislature, regulation or policy
- the subject matter of the disclosure is not trivial, frivolous or vexatious
- the disclosure was made in good faith with the reasonable belief in the truth of the allegations
- the disclosure provides adequate particulars of a wrongdoing in writing as outlined in Appendix 20-B
- the disclosing employee was not aware of the wrongdoing for longer than twelve (12) months
- if no other authority has jurisdiction over the investigation (e.g., criminal investigation being conducted by Law Enforcement)
- having regard to all the circumstances of the case, an investigation is warranted.

Reporting Requirements

The Ombudsman must report any investigation findings in writing, including

- the information received in the disclosure
- the steps taken in the investigation
- a summary of the evidence obtained
- whether a wrongdoing has been established
- any additional relevant information, to the disclosing employee, any deputy head involved in the disclosure or the investigation, and the Commissioner

The Ombudsman must, within 3 months after the end of each fiscal year, submit an annual report to the Commissioner setting out, for that fiscal year

- the number of general inquiries relating to this policy
- the number of disclosures received
- the number of investigations commenced
- the number of recommendations made to appropriate deputy heads
- whether there are any systemic problems that give rise to wrongdoings
- any recommendations for improvement that the Ombudsman considers appropriate
- any additional matter that the Ombudsman considers necessary.